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BOOK REVIEWS.

SIEGFRIED F. HARTMAN, *Editor-in-Charge.*

THE LAW OF LANDLORD AND TENANT. By HERBERT THORNDIKE TIFFANY. St. Paul: THE KEEFE-DAVIDSON Co. 1910. 2 vols. Vol. I. pp. xxiv, 1255; Vol. II. pp. xxiii, 1257-2343.

A TREATISE ON THE LAW OF LANDLORD AND TENANT. By H. C. UNDERHILL. Chicago: T. H. FLOOD & Co. 1909. 2 Vols. pp. ccxxxiv, 1516.

The appearance within a twelvemonth of two such ponderous works on a topic of such limited range, betokens the growing importance if not the perennial interest of the theme. With such competent works as those of Taylor, McAdam and Wood already in possession of the field, these new claimants upon the favor of the profession certainly have upon them the burden of establishing the necessity of their existence. This burden they discharge in very unequal degree, the work of Underhill only as a convenient summary of authorities brought down to date, that of Tiffany more adequately as a fresh, scientific restatement of the entire law of landlord and tenant. Both are characterized by fulness of treatment, though in this respect also they are very unequal, the Tiffany volumes being something like 60 per cent. larger than the rival work both in text and citation of cases as well as being more comprehensive and better proportioned. Both writers appear to have read their authorities with care, though in Tiffany the analysis of the cases is much closer and the statement of the law usually more careful and discriminating. In its general treatment of the subject, also, this writer's work is more in the nature of a scientific treatise, somewhat conventional, it is true, but firm and consistent and avowedly based on the discussion of the principles applied in the decisions. The work of Underhill, on the other hand, is a book of the more usual law-book type, intended primarily if not exclusively for the active practitioner and differing from a digest mainly in the more systematic arrangement and in the more condensed statement of the points decided in the cited cases. Indeed, despite its title, it is not, properly speaking, a treatise at all, there being no discussion of principles nor, as the author states in his preface, any attempt to reconcile conflicting decisions. The fact that the author is a New York practitioner has not unnaturally led him to cite a disproportionate number of cases from the reports of that state, but it is only fair to add that the decisions of other States and of England have not been neglected.

Perhaps the most serious defect of Mr. Underhill's work, one which it shares with most of the law books of the day and from which Mr. Tiffany's treatise is not entirely free, is the confident and indiscriminating way in which the law of the land is built up from decisions gathered from any and everywhere. All cases look alike to the average law writer and it is in this category that Mr. Underhill's book places him. That the law of one State of the Union may differ from the law of another, that conflicting decisions represent different jurisdictions and different bodies of law may indeed be gathered by the discriminating reader who consults the cases cited, but to the author there is only one law and one gospel. There is, indeed, as Chief Justice Baldwin

of Connecticut recently reminded us in *Hoxie v. R. R.*,¹ a "general American common law, resting on considerations of right and justice," but each State has its own distinct embodiment of that law and the general American common law is not to be ascertained by throwing into a heterogeneous mass all the decisions of all the States but by summing up the points in which they all agree and in noting carefully the numerous points of disagreement and divergence. Uniformity of law throughout the land is, indeed, a consummation much to be desired, but it certainly is not a present fact and it cannot be attained by ignoring but rather by recognizing and criticising the aberrations from the main body of principles and rules.

As has been said above, Mr. Tiffany has not been content, in Underhill's phrase, "to record the law as he has found it to exist" (a parlous undertaking) but has presented to the reader a reasoned discussion of principles, with such criticism of the authorities as that enterprise called for. This makes the book of value to the student and teacher of law as well as to the practitioner. But in his attitude with respect to legal development our author belongs distinctly to the conservative school of jurists. This attitude is well illustrated by his criticism of the recent tendency of the courts to treat as a constructive eviction the failure of a landlord to observe covenants the breach of which renders the demised premises untenable (Vol. II, p. 1271). One need not be an "insurgent" or even a dangerous "progressive" to recognize the validity of new adaptations of the law to new conditions, even though this may involve the restatement of time-honored principles or even the abandonment of old conceptions as to the scope of legal remedies; and it would seem to be only a proper use of the principle of eviction to apply it to the case of the tenant in a modern, steam-heated apartment, who is forced to abandon the premises through the owner's failure to furnish adequate heat in pursuance of his contract so to do.

Other instances of this tendency of our author might be cited but the defect is, in the present state of legal thought in this country, a manifestation of orthodoxy and not of heresy and must not be pressed too hard. Least of all should it lead the reader to overlook the merits of a very solid, learned and valuable contribution to our legal literature. The work is worthy to stand beside the same author's "Law of Real Property" and to say that is to give it high praise.

G. W. K.

THE CONSTITUTION OF THE COMMONWEALTH OF AUSTRALIA. By W. HARRISON MOORE. Melbourne: CHARLES F. MAXWELL. 1910. pp. xxviii, 782.

One of the most valuable services rendered by the study of comparative constitutional law is the bringing of our own institutions out into a new and bolder relief; and for this reason (as well as on account of its intrinsic merits) Mr. Moore's Constitutional Law ought to meet with a hearty welcome in the United States. It is so systematically and carefully done; it contains such copious references to the judicial decisions of our own tribunals; and it illuminates so many federal problems (now more complex and vexatious than ever) that one could hardly imagine a better book to keep alongside of Story, Kent, and Willoughby. It deals exhaustively with such themes as the organization and powers of the Australian federal government, the place

¹(1909) 82 Conn. 352, 360.